



OFFICE OF THE COUNTY ATTORNEY

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County Executive

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County Attorney

October 24, 2012

David Rocah, Staff Attorney
ACLU of Maryland
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Baltimore, Maryland 21211
Fax (410) 366-7838
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Re: FOP Bus Ads

Dear Mr. Rocah:

I am writing in response to your October 23, 2012, letter regarding the Fraternal Order of Police's desire to purchase advertising space on County Ride-On buses concerning Question B, which will appear on the November 6 ballot. For the reasons set forth below, I reject your legal analysis of the situation—the County is completely within its right to reject the FOP's proposed advertisement. Nonetheless, in light of your threat to pursue legal action against the County, and in an effort to avoid costly litigation, the County will permit the FOP to purchase advertising space on Ride-On buses. This is a one-time exemption, based upon this one issue (Question B), and this one particular forum (bus advertising), between now and the general election on November 6, 2012. This one-time exemption is not a precedent and the County will otherwise strictly maintain the rules governing bus advertising.

With the exception of traditional public fora (e.g., parks, streets) a speaker cannot demand access to property to engage in speech merely because the government owns that property. A Ride-On bus is not a traditional public forum. You acknowledge that the County can establish rules governing access to the non-traditional forum at issue in this case (advertising on Ride-On buses), including content-based rules, so long as the County does not engage in viewpoint discrimination. The County's rules governing access to advertising space are straightforward: the County, through its contractor, accepts commercial advertising and government-sponsored speech (the County as the sole speaker). Those are the only two categories of speech permissible in buses advertisements. There is no viewpoint discrimination within those two categories. The FOP's proposed advertisement against Question B does not fall within either of the permissible categories. It is not commercial speech and it is not government-sponsored speech. Thus, the County properly rejected the proposed advertisement.

Your assertion that the County engages in viewpoint discrimination (presumably within the category of government-sponsored speech) by not accepting the FOP's ad is nonsensical. Imagine that the County places ads encouraging parents to have their children vaccinated. Following your logic, the County would be required to place non-commercial ads from other groups asserting that childhood vaccinations cause autism. But such an advertisement does not fall within the category of government-sponsored speech. Accepting such an advertisement would destroy the purpose of the government-sponsored speech forum—an outlet for the County as the exclusive speaker on non-commercial matters.

The County maintains that its contractor properly refused to accept FOP's proposed advertisement because it does not fall within the categories of speech permissible under the rules that govern access to this limited public forum (i.e., it was neither commercial speech nor government-sponsored speech). Nonetheless, in light of your threat to pursue legal action against the County, and in an effort to avoid costly litigation, the County will permit the FOP to purchase advertising space on Ride-On buses. This is a one-time exemption, based upon this one issue (Question B), and this one particular forum (bus advertising), between now and the general election on November 6, 2012. This one-time exemption is not a precedent and the County will otherwise strictly maintain the rules governing this limited public forum.

Very truly yours,

Handwritten signature of Marc P. Hansen in cursive script, followed by the initials "EBJ".

Marc P. Hansen
County Attorney

cc: Timothy Firestine, Chief Administrative Officer
Patrick Lacefield, Director, Public Information Office
Al Roshdieh, Department of Transportation
Steve Farber, Council Staff Director
Michael Faden, Sr. Legislative Counsel, County Council
Robert Drummer, Sr. Legislative Counsel, County Council
Howard Benn, Department of Transportation
John Markovs, Deputy County Attorney